

Residential Tenancies Tribunal

Decision 19-0777-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:20 p.m. on October 30, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the landlord, did not attend the hearing but she was represented by [REDACTED].
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing.

Preliminary Matter:

4. The landlord's representative discontinued the claim for vacant possession and the payment of late fees. The claim for rent was amended from \$2100.00 to \$3000.00 for the period ending October 31, 2019. The payment of utilities was amended from \$283.72 to \$493.99 up to October 21, 2019.
5. The tenant called [REDACTED] as a witness.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$3000.00;
 - b. Payment of utilities in the amount of \$493.99.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
8. Also relevant and considered in this case are Sections 14 and 19 of the Act.

Issue 1: Payment of rent - \$3000.00

9. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

10. The landlord's representative testified that the tenant had an agreement with the landlord for a month to month tenancy to begin on September 1, 2019 with rent set at \$1500.00 per month. They were allowing the tenant a period of time to move her belongings in before September 1, 2019. On August 11, 2019 he had a discussion with the tenant and the person who was moving in with her about moving in early. There was no discussion on paying the rent. He assumed that the rent would start on the date she moved into the unit. She moved in on August 15, 2019. He testified that \$900.00 was paid towards the rent for August 2019; \$200.00 was paid on August 12, 2019 and \$700.00 was paid on August 30, 2019.
11. The representative testified that the tenant was served with a termination notice on October 2, 2019 to vacate on October 8, 2019. She vacated on October 29, 2019.
12. After the tenant gave her testimony the representative testified that the landlord did not receive any monies from Advanced Education Skills and Labour (AESL) towards the rent for the tenant.

Tenant Position

13. The tenant testified that she moved into the unit on August 10, 2019 with rent set at \$1500.00 per month starting September 1, 2019. She had an agreement with the landlord and the landlord's mother that she didn't have to pay the rent for the month of August 2019. On August 30, 2019 she paid \$900.00 towards the rent for September 2019. Some of the rent was paid in cash and the remainder was paid by interac e-transfer. She then testified that the rent for September and October 2019 was paid by AESL. However she did not present any records to show the payments. The tenant presented a copy of the rental agreement (T #1) but the 1st page was missing.

Analysis

14. I have reviewed the testimony and evidence of the landlord’s representative and the tenant. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenancy was to start on September 1, 2019. The landlord allowed the tenant to move in before September 1, 2019 and there was no discussion on the payment of rent for the month of August 2019. I also find that the tenant paid the landlord \$900.00 towards the rent for September on August 12 and August 30, 2019. Because the landlord didn’t receive the full amount of rent for September a termination notice was given on October 2, 2019 and the tenant vacated on October 29, 2019. The amount of rent owing is \$600.00 ($\$1500.00 - \$900.00 = \600.00) for September 2019 and \$1426.22 ($\$1500.00 \times 12 \text{ months} = \$18,000.00 \div 366 \text{ days} = \$49.18 \text{ per day} \times 29 \text{ days} = \1426.22) for October 1 – 29, 2019 for a total of \$2026.22 ($\$600.00 + \$1426.22 = \2026.22).

Decision

15. The landlord’s claim for rent succeeds as per the following:

- a. Rent owing for September 2019.....\$600.00
- b. Rent owing for October 1 – 29, 2019\$1426.22
- c. Total rent owing.....\$2026.22

Issue 2: Payment of Utilities - \$493.99

Landlord Position

16. The representative testified that the tenant was responsible for the payment of the power bill. She did not have the power converted to her name and she has not paid the power bills. The amount owing is \$493.99. The representative submitted copies of 3 Newfoundland Power bills (LL #3). The power bills are for the periods July 19 – August 20, 2019; August 20 – September 20, 2018 and September 19 – October 21, 2019. The landlord is seeking payment from August 15, 2019.

Tenant Position

17. The tenant acknowledges that she agreed to pay the power bill. After she moved in she found out there was one meter for the entire house. She has not paid anything towards the power bill. She submitted copies of 3 Newfoundland Power bills (T #2). The power bills are for the period May 21 – June 19, 2019, June 19 – July 19, 2019 and August 20 – September 19, 2019. She stated that

the power bills for June and July were given to her from the landlord to show the cost of electricity for the unit.

Analysis

18. I have reviewed the testimony and the evidence presented and I have determined there is one issue that needs to be addressed; is the tenant responsible for the payment of the power bill. Based on the rental agreement submitted, the tenant is responsible for the payment of the power bills. I find that the tenant has not paid anything towards the power bills. As the tenancy did not start until September 1, 2019, the tenant is responsible for the payment of the power bill starting September 2019. The amount owing for September 1 – 19, 2019 is \$112.67 ($\$177.87 \div 30 \text{ days} = \$5.93 \text{ per day} \times 19 \text{ days} = \112.67) and the amount owing for September 20 – October 21, 2019 is \$295.94 for a total of \$408.61 ($\$112.67 + \$295.94 = \$408.61$).

Decision

19. The landlord's claim for payment of utilities succeeds in the amount of \$408.61.

Issue 3: Application for Security Deposit

20. Under the authority of Section 47.(j) the director may authorize a landlord to offset money a tenant owes to the landlord against money the landlord owes to the tenant. Further under subsection (m), the director has the authority to determine the disposition of the security deposit.

Tenant Position

21. The tenant testified that she paid \$775.00 in cash as a security deposit to [REDACTED], the landlord's mother, on August 10, 2019.
22. [REDACTED], witness for the tenant, testified that sometime between August 17 and the 20th he observed the tenant giving [REDACTED] \$500.00 for the security deposit. A few days later the tenant sent the remainder of the security deposit by interac e-transfer to [REDACTED].

Landlord Position

23. The representative testified that the only money the landlord received was for rent in the amount of \$200.00 on August 12 and \$700.00 on August 30, 2019.

Analysis

24. I have reviewed the testimony of the representative, the tenant and the witness for the tenant. I find that there is one issue that needs to be addressed; did the tenant pay a security deposit. I find that the testimony of the witness is conflicting to the tenant’s testimony. The representative’s testimony is more credible than that of the tenant and the witness. Based on the representative’s testimony I find the tenant did not pay a security deposit. The only money paid was in the amount of \$200.00 on August 12, 2019 and \$700.00 on August 30, 2019. This amount was applied towards the rent.

Decision

25. The tenant did not pay a security deposit.

Summary of Decision

26. The landlord is entitled to the following:

- a) Payment of rent..... \$2026.22
- b) Payment of utilities..... \$408.61
- c) **Total owing to Landlord..... \$2434.83**

April 1, 2020
Date

Residential Tenancies Section